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In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 1379

JOHN P. PARRISH, PETITIONER

v.

UNITED STATES OF AMERICA

No. 1382

ISADORE PARZOW, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Parr. Pet. App. 6–9; Parz. Pet. App. B) [1] is reported at 391 F. 2d 240.

JURISDICTION

The judgments of the court of appeals were entered on February 5, 1968 (7 R. 19, 59), and petitions

[1] "Parr. Pet." refers to Parrish's petition; "Parz. Pet.," to Parzow's.

for rehearing *en banc* (7 R. 21–24, 61–65) were denied on March 11, 1968 (7 R. 32, 69). On April 3, 1968, the Chief Justice extended petitioners' time for filing petitions for writs of certiorari until April 30, 1968, and the petitions were filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

NOS. 1379 AND 1382

1. Whether petitioners' motions to suppress material that they voluntarily made available to a federal investigator, on the allegation that the government falsely represented that the investigation was merely civil in character, were properly denied.

2. Whether the trial court abused its discretion in refusing to ask the prospective jurors on *voir dire* whether the fact that one of the defendants was Jewish would make it more difficult for any of them to acquit him.

NO. 1379

3. Whether, in the circumstances of this case, the giver and the accepter of a bribe may be convicted of conspiring with each other to violate 18 U.S.C. 1952 by agreeing to use interstate facilities with intent to promote bribery in violation of state law and thereafter to perform an act facilitating promotion of bribery.

4. Whether the evidence was sufficient to prove that petitioners performed an act to facilitate the carrying on of bribery after using the mails with intent to do so.

STATUTES INVOLVED

The pertinent provisions of 18 U.S.C. 1952 and of Sections 18.1–278 and 18.1–279 of the Code of Virginia appear in the Appendix, *infra*, pp. 22–23.

STATEMENT

Following a jury trial in the United States District Court for the Eastern District of Virginia, petitioners were convicted on both counts of a two-count indictment charging that they conspired to use (count 1) and used (count 2) the facilities of interstate commerce (including the mails) to carry on an unlawful activity, the bribery of an officer of the Commonwealth of Virginia, in violation of 18 U.S.C. 371 and 1952 (Appendix, *infra*, p. 22) (1 R. 1–3, 290–291). On April 18, 1967, each was sentenced to concurrent terms of two years' imprisonment on both counts (1 R. 391, 392). The court of appeals affirmed (7 R. 19, 59).[2]

1. Petitioner Parrish, the officer alleged to have been bribed, was, during the relevant period, a member of the Board of Supervisors of Fairfax County, Virginia, the body charged with the responsibility for the regulation of zoning in the county. Petitioner Parzow was an officer and stockholder of Builders and Developers Corporation, a real estate developer with offices in Washington, D.C., which had an interest in a 12-acre tract in Fairfax. The conspiracy

[2] The court below referred to its opinion, released on the same day, in *United States* v. *Wechsler*, No. 11,331, C.A. 4, decided February 5, 1968 (Parr. Pet. App. 10–27), pending on petition for certiorari, No. 1377, this Term, as more fully explaining its view of the relationship between Section 1952 and state law.

count—the only count the court of appeals found it necessary to consider in view of the concurrence of equal sentences on both counts (see Parr. Pet. App. 8, n. 1)—charged that it was the plan of the conspiracy that Parrish would vote to approve the corporation's application for the rezoning of the tract from "residential" to "commercial" and would accept from Parzow, in return for his vote, 1,000 shares of stock in a company (Kent Washington, Inc.) which Parzow would buy for his benefit; and that, in order to effectuate the conspiracy, the mails between the District of Columbia and Virginia would be used. Two overt acts were alleged—the casting by Parrish, on July 26, 1962, of his favorable vote, and the acceptance by Parrish, on August 17, 1962, of the stock which constituted the bribe (1 R. 1–2).

The government established at the trial [3] that Parrish, on July 26, 1962, pursuant to an agreement with Parzow, voted to approve the application of Builders and Developers Corporation for the rezoning of the tract of land involved, in the manner alleged, so as to permit its development as a shopping center; that, in exchange for Parrish's vote, Parzow bought 1,000 shares of Kent Washington stock for $5,250.60 from Balogh and Co., a Washington, D.C. brokerage house, and caused the certificates to be mailed to Parrish in Virginia; and that Parrish accepted delivery of the

[3] Petitioners do not challenge the sufficiency of the evidence establishing these events.

shares by signing a receipt for them and returning the receipt by mail to the broker (Parr. Pet. App. 7).[4]

The evidence relating to the interstate mailings was as follows:

The Kent Washington shares were bought in a series of installments, over a period of approximately a week, commencing with a 150-share purchase on July 31, 1962, five days after the favorable vote. The confirmation statements for all of the purchases were made out to "John P. Parrish, 515 Wythe Street, Alexandria, Virginia," but only the first statement was mailed to Parrish (4 R. 135, 170–171, 174; G. Ex. 7, 4 R. 82). Suzanne Pearce, the Balogh and Co. clerk who typed the statements, mailed the first one to Parrish at the Virginia address indicated (4 R. 170–171, 174). She did so routinely, in accordance with the "written confirmation" she had received from the "Traders office" (4 R. 174).[5] Later, her superior "bawled [her] out" for mailing the statement to Parrish and instructed her to deliver the subsequent statements to the Balogh salesman who was handling the transactions—Morris Parzow, a brother of peti-

[4] Petitioners' assertion that the money which Parzow advanced for the purchase of the stock was in the nature of a "loan" to Parrish (Parr. Pet. 5; Parz. Pet. 4) is supported only by the testimony of Parrish (5 R. 391–394), which the jury manifestly did not credit. (Parzow did not testify.) It was the theory of the government, and the evident conclusion of the jury, that the $5,000 "bearer" note purportedly executed by Parrish on July 23, 1962 (G. Ex. 44, 5 R. 238–239), to which petitioners refer, was designed to conceal the true character of the transaction.

[5] See also 4 R. 149, 152–153 (Miss Pearce's testimony on this point on *voir dire*).

tioner Parzow (4 R. 171, 174).[6] Miss Pearce complied with the instruction (4 R. 174). On August 14, 1962, after all the shares had been bought, Balogh and Co. mailed the certificates for the shares to the transfer agent—a bank in Silver Spring, Maryland—with the request that they be transferred to Parrish's name and new certificates issued (4 R. 115, 172–173; G. Ex. 8, 4 R. 116–117). On August 16, the transfer agent complied with the request and mailed the new certificates, registered in Parrish's name, to Balogh and Co. (4 R. 116; G. Ex. 27, 4 R. 116–117). On August 17, Balogh mailed the certificates to Parrish in Virginia, together with a receipt which Parrish was asked to sign and return (4 R. 173; G. Ex. 9, 4 R. 82). Parrish signed and mailed back the receipt (5 R. 393; G. Ex. 9, 4 R. 82).

2. Petitioner Parzow filed a pre-trial motion to suppress the use of all records obtained from him by Internal Revenue Agent Benjamin Sondak, or examined by the agent at Parzow's office, pertaining to Parzow's purchase of Kent Washington stock or any other transaction between him and Parrish, and all oral statements made by Parzow to the agent relating to such records (1 R. 34–36). Parzow alleged in the motion that Sondak had not advised him of his "constitutional rights" and that the evidence sought to be suppressed had been obtained by the agent

[6] Miss Pearce testified on *voir dire* that the superior explained to her that the stock was a gift to Parrish from the Parzow family and that the family did not want Parrish to know how much it was costing (4 R. 149–150, 154).

through false representations that he was not conducting a criminal investigation and that Parzow was not an object of his inquiries (1 R. 35). Consideration of the motion turned solely on a stipulation, filed November 18, 1966, that if Agent Sondak were called he "would" testify that he visited Parzow in the latter's office some time during 1965 and told Parzow that his visit was concerned, not with Parzow, but with a person with whom Parzow had done business, Parrish; that the agent did not advise Parzow of his rights; that prior to his visit the agent had audited Parzow's personal and business tax returns and knew that Parzow was represented by counsel in connection with the audit; and that he had not communicated with the attorney before calling on Parzow. It was further stipulated that, if called, Parzow would testify that if Sondak had advised him of his rights he would have communicated with his attorney to protect them (1 R. 330–331).

On February 14, 1967, the court denied the motion without prejudice to the right to renew it at the trial as and when any specific evidence was tendered (1 R. 124).

At the trial Agent Sondak was called as a government witness. Counsel for Parzow, observing that the agent's testimony would involve the subject matter of the previous motion to suppress, renewed the motion. In the absence of new grounds in support of it, the motion was again denied (5 R. 228). Sondak proceeded to testify, *inter alia,* that in 1964, when he examined Parrish's 1962 income tax return, he noticed that Parrish had reported the receipt of dividend income

from Kent Washington stock; that, knowing from his prior examination of Parzow's tax returns that Parzow had a substantial stock interest in Kent Washington, he inquired of Parrish's accountant as to the source of the funds with which the stock had been acquired; that the accountant later produced for the agent a copy of a promissory note, purportedly signed by Parrish on July 23, 1962, promising to pay $5,000 to the bearer on demand; and that, when Sondak subsequently questioned Parzow about the matter, Parzow confirmed the receipt of such a note, produced the original, and explained that it evidenced a loan in that amount which Parzow had made to Parrish, for the purchase of Kent Washington stock, because Parrish had been nice to him on several occasions in the past (5 R. 236–243). Parzow told Sondak, according to the agent, that he had forgotten all about the note until Sondak had reminded him of it (5 R. 242).

After the note had, without articulated objection on Parrish's part, been received in evidence (G. Ex. 44, 5 R. 238), counsel for Parrish asked if the court understood that "our objection which we made at the bench goes to all of this."[7] The court replied that it did and that the exhibit had been received over the objection of both defendants (5 R. 239–240). Although offered and received as a government exhibit, the $5,000 note was on a list of exhibits which counsel for Parrish had filed five days before trial, itemizing the exhibits that he might introduce (1 R. 273). Testifying in his own behalf, Parrish identified the note and explained it as a valid legal obligation (5 R. 391).

[7] See note 8, *infra*, p. 9.

ARGUMENT

1. Both petitioners contend that Parrish's $5,000 promissory note should have been suppressed as evidence because the government came into possession of it through deceit (Parr. Pet. 5–11; Parz. Pet. 8–13.) [8] Parzow also challenges the admissibility of various other items of evidence that were obtained from him by Agent Sondak, including particularly the oral statements he made to the agent in attempting to explain

[8] We assume, *arguendo*, that Parrish adequately objected at the trial to the admission of the note in evidence. Parrish had filed a pre-trial motion to suppress, in which he asked for the suppression of everything obtained from him by any government agent (1 R. 6–7). While this motion was obviously broad enough to include the note, a copy of which had been given to Agent Sondak by Parrish's accountant, Parrish's counsel, during a pre-trial hearing on the motion, narrowed the scope of the material sought to be suppressed to certain ledger sheets which, with Parrish's permission, Sondak had microfilmed (2 R. 145, 148–150, 154, 203). When the government indicated that it did not intend to use the sheets in evidence, the court, to counsel's apparent satisfaction, ruled the motion moot (2 R. 203–204, 206–207). Subsequently, however, the court "denied" the motion, without prejudice to the right of Parrish to renew it at the trial as and when specific evidence was offered (1 R. 124). As mentioned above (p. 8, *supra*), after the note had been admitted into evidence at the trial, counsel for Parrish indicated to the court that he wished to be understood as having joined in Parzow's previously stated objection to it. It is also appropriate to observe that, as we pointed out to the court of appeals in arguing that there had been no effective objection by Parrish at the trial, the note was on Parrish's own list of tentative exhibits (1 R. 273), but that for tactical reasons the government had elected to introduce the note as its own exhibit. On its face, the note was, of course, exculpatory; indeed Parrish's own testimony relied on it as corroborative of his defense—that the money used by Parzow to buy the Kent Washington stock (in Parrish's name) represented a loan in that amount by Parzow to Parrish.

the circumstances surrounding the note. (Parz. Pet. 10, 13).[9] The record, however, contains no support for the claim that the government obtained this evidence by misrepresenting to petitioners that the investigation it was conducting, to which the materials and statements were germane, was a purely civil inquiry, without criminal aspects or overtones.

The claim that petitioners were victims of deception and misrepresentation on the part of the government rests almost wholly on an oral stipulation made by counsel for the government at a hearing in cases involving, not petitioners, but other members of the Fairfax County Board of Supervisors and persons who allegedly had bribed them in connection with various other zoning proceedings.[10] Motions to suppress similar to Parzow's had been filed. On November 18, 1966, during the hearing on the motions, government counsel stipulated that in 1963 the Internal Revenue Service established a special group to investigate reports of corruption and bribery of public officials in northern Virginia, including members of the Fairfax

[9] No oral statement of Parrish's, incriminatory or otherwise, is in issue, since Sondak testified to no such statement. So far as we are aware, the copy of the $5,000 note is the only evidence that was obtained by Sondak from Parrish.

[10] The proceedings quoted at Parr. Pet. App. 33–35 and Parz. Pet. 8–10 are from the record in *United States* v. *Nathan Wechsler, et al.*, No. 4375, E.D. Va., and *United States* v. *Alan I. Kay, et al.*, No. 4383, E.D. Va., involving other members of the Fairfax County Board of Supervisors and the persons by whom, in different indictments, they were alleged to have been bribed. The *Wechsler* case is presently pending on petition for a writ of certiorari, No. 1377. (The portions of the *Wechsler-Kay* record here relied on are not germane to any issue raised in the *Wechsler* petition.)

County Board. This group, whose investigations were collectively known as the "Metro" project, included both "internal revenue" agents (basically auditors) and "special" agents (criminal investigators), all under the direction of a supervisor or "coordinator". The work of the group included auditing of the income tax returns of the suspect officials to determine whether money reportedly paid as bribes had been declared by the recipients as income. The agents who performed the audits reported the results of their work to the supervisor, who assimilated and evaluated the information supplied by all of the agents. At the conclusion of the inquiry, the I.R.S. project supervisor and an attorney attached to the Criminal Division of the Department of Justice went over all the reports to determine whether the evidence warranted presentation to the grand jury (Parr. Pet. App. 33–35; Parz. Pet. 8–10).[11]

Petitioners' attempt to distill from this stipulation an acknowledgment by the government and a finding by the court that the inquiry into their affairs was deceitfully misrepresented to them by the government as non-criminal in character is unfounded. There was no such acknowledgment or finding. Therefore the

[11] The Justice Department attorney, Edward T. Joyce, testified at a pre-trial hearing on Parrish's suppression motion in the present case (see note 8, *supra*) that his duties during the investigation consisted of acting as a legal adviser to the group and that he had no supervisory authority (2 R. 115–118, 121). Although the court, in the *Wechsler-Kay* transcript, referred to Joyce in colloquy as "the head" of the investigation (Parr. Pet. App. 33; Parz. Pet. 8), there is no evidentiary support in the record for Parrish's assertion (Pet. 6) that the group worked under the attorney's "direction".

decisions relied on, involving fraudulent misrepresentations of various kinds by government agents (Parr. Pet. 9; Parr. Pet. 11–12), are inapposite. It is true that Agent Sondak, in his communications with petitioners, did not affirmatively and specifically disclose the criminal character of the inquiry (assuming he was personally aware of it). But the government had no duty to make such a disclosure. *United States* v. *Sclafani,* 265 F. 2d 408, 414–415 (C.A. 2), certiorari denied, 360 U.S. 918; *United States* v. *Frank,* 245 F. 2d 284, 285–286 (C.A. 3), certiorari denied, 355 U.S. 819; *Turner* v. *United States,* 222 F. 2d 926, 931 (C.A. 4), certiorari denied, 350 U.S. 831; *Montgomery* v. *United States,* 203 F. 2d 887, 892–893 (C.A. 5). Certainly if the government may legitimately use informers and undercover agents in its investigations (cf. *Lewis* v. *United States,* 385 U.S. 206, 209–211; *Hoffa* v. *United States,* 385 U.S. 293, 300–303), in which the subject supplies evidence against himself without knowing his actions are under scrutiny, there is no obligation to make known to one who is fully aware he is under investigation the character and dimensions of the inquiry.

Parrish, an attorney, suggests that he was entitled to a *Miranda*[12] warning when Sondak first approached him (Parr. Pet. 10). Since, however, he was not in custody, it is clear that no such warning was required. *Kohatsu* v. *United States,* 351 F. 2d 898, 900–902 (C.A. 9), certiorari denied, 384 U.S. 1011; *Rickey* v. *United States,* 360 F. 2d 32 (C.A. 9), certiorari denied, 385 U.S. 835; *Thomas* v. *United States,*

[12] *Miranda* v. *Arizona,* 384 U.S. 436.

370 F. 2d 96 (C.A. 5), certiorari denied, 386 U.S. 975;[13] *United States* v. *Maius*, 378 F. 2d 716, 718–719 (C.A. 6), certiorari denied, 389 U.S. 905; *Schlinsky* v. *United States*, 379 F. 2d 735, 738, n. 2 (C.A. 1), certiorari denied, 389 U.S. 920.[14] Compare *Mathis* v. *United States*, No. 726, this Term, decided May 6, 1968, where this Court emphasized that the existence of custody governs the applicability of *Miranda*. There is thus no substance to Parrish's suggestion (Pet. 10) that a distinction must be drawn, with respect to the necessity for a *Miranda* warning, between a case which begins as a routine tax audit and develops at some point into a criminal investigation and a case like the present one, which had a criminal orientation from the start. Cf. *Turner* v. *United States*, 222 F. 2d 926, 931 (C.A. 4), certiorari denied, 350 U.S. 831; *United States* v. *Frank*, 151 F. Supp. 864, 865 (W.D. Pa.), affirmed, 245 F. 2d 284 (C.A. 3), certiorari denied, 355 U.S. 819.

Nor is Parzow aided by the special stipulation in *this* case. Its only pertinent aspect is the statement that Sondak would have testified, had he been called, that when he visited Parzow in 1965 he told Parzow that his visit had to do with Parrish, not Parzow (p. 7, *supra*). It is not disputed that Parrish was the principal subject of Sondak's investigative efforts.

[13] Mr. Justice Douglas' dissent from the denial of certiorari in *Thomas* makes it clear that the *Miranda* question was raised in the case. Cf. *Evans* v. *United States*, 377 F. 2d 535 (C.A. 5).

[14] The great majority of district court decisions are in accord with the courts of appeals. Those cases are collected in *Frohmann* v. *United States*, 380 F. 2d 832, 836 (C.A. 8), certiorari denied, 389 U.S. 976.

That the government eventually determined to proceed against Parzow as well as Parrish does not show that the agent's statement was fraudulent.

2. It was not an abuse of discretion for the trial judge to refuse petitioner Parzow's request that he ask the prospective jurors during the empanelment proceedings whether the fact that one of the defendants was Jewish would make it more difficult for any of them to acquit him (Parz. Pet. 5–8).[15] Rule 24(a) of the Federal Rules of Criminal Procedure explicitly leaves the scope of the *voir dire* interrogations of prospective jurors to the discretion of the court, and it is well settled that, unless clearly abused, the exercise of that discretion will not be interfered with on appeal. *Connors* v. *United States,* 158 U.S. 408, 413; *Kreuter* v. *United States,* 376 F. 2d 654, 657 (C.A. 10); *Ross* v. *United States,* 374 F. 2d 97, 104–105 (C.A. 8), certiorari denied, 389 U.S. 882; *Yarborough* v. *United States,* 230 F. 2d 56, 63 (C.A. 4), certiorari denied, 351 U.S. 969; *United States* v. *Lebron,* 222 F. 2d 531, 536 (C.A. 2), certiorari denied, 350 U.S. 876. Parzow made no showing or offer of proof of any particularized need for such an inquiry—such as, for example, the existence or substantial suspicion of significant anti-Semitism in the community. Particularly where, as here, there is no connection of any kind between the offense charged and the tenets of a particular reli-

[15] Although only petitioner Parzow is Jewish and only he asked that the inquiry in question be made (1 R. 284; 4 R. 31), petitioner Parrish seeks to join Parzow in pressing this claim (Parr. Pet. 11–12). While we question whether, in view of his failure to raise the issue at trial, he is free to raise it at the appellate level, the contention is in any event unavailing.

gion, a court is not required, even at the request of an accused, to appear to endorse the suggestion implied by such an interrogatory (or which the court may reasonably fear that the jurors might think is implied)—that the communicants of one faith are more likely than those of another to commit a particular offense. Cf. *Yarborough* v. *United States,* 230 F. 2d 56, 63 (C.A. 4), certiorari denied, 351 U.S. 969 (upholding a refusal to inquire as to the prospective jurors' religious affiliations in a prosecution for an offense to which the affiliations were in no way relevant):

> No matter of any religious significance whatever was involved in the case; and appellant does not show how he could have been prejudiced in any way by the refusal of the judge to make inquiry of the jurors as to a private matter of this sort. There is nothing to show that he belonged to any religious sect or was charged with a crime as to which any sect held views different from the rest of mankind * * *.

The question may well be quite different, of course, if there is some rational connection or relationship between the offense charged and the faith or sect that is the subject of the proposed inquiry. Compare *Potter* v. *State,* 86 Tex. Crim. 380 (mistakenly relied on by Parzow at Pet. 7), where the charge was the publication of a libelous diatribe against Jews.[16] In

[16] Parzow's reliance on *Aldridge* v. *United States,* 283 U.S. 308, is misplaced. The Court there held that a Negro, on trial for the murder of a white person, was entitled to have white prospective jurors asked on their *voir dire* whether they had any racial prejudice that would prevent them from giving the

the absence of such demonstrable relevance, it was not reversible error to decline to make the investigation sought.

3. Petitioner Parrish challenges the validity of count 1 of the indictment on the ground that it impermissibly charged a conspiracy between two persons to commit a substantive offense which by its nature necessarily required concert of action on the part of the accused (Parr. Pet. 13–18). We agree that "where it is impossible under any circumstances to commit the substantive offense without cooperative action, the preliminary agreement between the same parties to commit the offense is not an indictable conspiracy * * *." *Gebardi* v. *United States*, 287 U.S. 112, 122. And we shall assume, *arguendo*, that bribery is one of those substantive offenses which come within this principle. See *United States* v. *Dietrich*, 126 Fed. 664, 666–668 (C.C. D. Neb.); *United States* v. *Burke*, 221 Fed. 1014, 1015 (S.D.N.Y.), reversed on other

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accused a fair trial. Parzow's primary reliance is on the Court's *obiter* observation that the right to examine prospective jurors as to the existence of a disqualifying state of mind "has been upheld with respect to other races than the black race, and in relation to religious and other prejudices of a serious character" (283 U.S. at 313). Of the cases cited for this statement, one was the plainly distinguishable case of *Potter* v. *State*, 86 Tex. Cr. 380, referred to in the text. In the only other primarily religion-related case, *Horst* v. *Silverman*, 20 Wash. 233, there is nothing inconsistent with the ruling of the trial court here. There, in a civil action for damages against a Jewish storekeeper, the defendant's attorney was permitted by the trial court to inquire of a prospective juror whether, *in general*, he was prejudiced against persons of the Jewish faith, but inquiry was not permitted as to whether the juror would credit the testimony of persons of that faith as readily as he would the testimony of others. That refusal was *affirmed*.

grounds *sub nom. Salas* v. *United States,* 234 Fed. 842 (C.A. 2). But in this case the minor premise for invoking this principle is lacking, for petitioners were *not* charged with conspiracy to give and receive a bribe but with conspiring to violate 18 U.S.C. 1952. As Parrish himself in fact recognizes (Parr. Pet. 18), the offense defined by 18 U.S.C. 1952 contains two elements, the use of interstate facilities with intent to carry on an unlawful activity (here bribery) and the subsequent performance of an act to facilitate carrying on the illegal activity. Thus, the substantive offense defined by Section 1952 contains "an ingredient in addition to" the element requiring concert of action, and in this context a conspiracy charge is valid. See *United States* v. *Katz,* 271 U.S. 354, 355–356. In short, while the substantive offense includes bribery (which, in this case, presupposes agreement by petitioners), it involves another element in addition—the use of interstate facilities. Since the cooperative activity of the accused persons was admittedly not essential to that component, the conspiracy charge was not vulnerable under the principle invoked. *United States* v. *Katz, supra.*[17]

[17] Parrish's other challenge to the conspiracy count—that it failed to charge an overt act in furtherance of the conspiracy (Parr. Pet. 18–25)—is answered in note 19, *infra,* p. 21, and accompanying text. Parrish also attacks the validity of count 2 in various respects (Pet. 25–33), but these challenges need not be considered since, as the court of appeals noted (Parr. Pet. App. 8, n. 1), he received identical and concurrent sentences on both counts. *United States* v. *Romano,* 382 U.S. 136, 138; *Lawn* v. *United States,* 355 U.S. 339, 359; *Hirabayashi* v. *United States,* 320 U.S. 81, 85.

4. While conceding the sufficiency of the proof that he and Parzow violated the Virginia laws against bribery, petitioner Parrish further contends that the evidence failed to show that they either violated or conspired to violate 18 U.S.C. 1952 (Parr. Pet. 33–36).

Parrish's argument begins by pointing to the relevant Virginia statutes (Sections 18.1–278 and 18.1–279 of the Code of Virginia (set forth in the Appendix, *infra,* pp. 22–23; and see *Ford* v. *Commonwealth,* 177 Va. 889, 893), under which the briber's offense is complete when he makes or offers a gift "with intent to" influence the recipient's judgment, and the offense of the bribed person is complete when he accepts the gift (or promise of one) "under an agreement" that his vote or judgment "shall be" influenced. Parrish argues that, therefore, both his and Parzow's bribery violations were complete under state law not later than July 26, 1962—the date on which the vote was cast in the zoning matter. He further notes that under the provision of 18 U.S.C. 1952 here relevant (subsection (a)(3), Appendix, *infra,* p. 22) an act facilitating the carrying on of the "unlawful activity" (here bribery) must *follow* the use of an interstate facility with the requisite corrupt intent. From this statutory plan he contends that neither he nor Parzow could have violated the federal statute because the first alleged use of such a facility—the mailing by Balogh and Co. from Washington, D.C., to Parrish in Virginia, of the confirmation statement for the initial purchase of the Kent Washington stock (see pp. 5–6, *supra*)—did not

occur until July 31, 1962,[18] five days after Parrish cast the bought vote. It is irrelevant, he says, that the "payoff"—the delivery to him of the certificates for the stock which constituted the bribe—did not occur until August 17, 1962 (p. 6, *supra*), substantially after both dates.

In our view, this argument lays undue stress on technical aspects of the "unlawful [State] activity" which the federal statute assimilates, cf. *United States* v. *Kubacki*, 237 F. Supp. 638, 643 (E.D. Pa.), and ignores both the critical language and evident objective of the federal statute. We do not doubt that petitioners' bribery offenses were "complete" in the sense that, by July 26, 1962, when Parrish, in consideration of a *promised* gift, cast the tainted vote, their conduct had already ripened into indictable crimes under Virginia law. Realistically viewed, on the other hand, the offenses were not "complet*ed*" (Parr. Pet. App. 13)—

[18] Parrish also suggest that the first *relevant* use of the mails occurred even after July 31. He states that the July 31 mailing was an "inadvertent error" on the part of the Balogh and Co. file clerk, made "in violation of express instructions" (Parr. Pet. 33–34). The record, however, does not support this assertion. The clerk testified that she mailed the statement routinely, in accordance with the "written confirmation" she had received from the "Traders office" (p. 5, *supra*). That she was later scolded for her action (*ibid.*) does not show that the mailing was either inadvertent or violative of instructions. In any event, Parrish concedes that there was an interstate usage of the mails on August 14, when Balogh mailed instructions to the transfer agent in Maryland to transfer the purchased shares to Parrish's name (Parr. Pet. 34; p. 6, *supra*). This was, of course, prior to August 17, the date on which the certificates were mailed to Parrish, and which, in our view (for the reasons stated in the text immediately following), marked the practical completion of the conduct violating the federal statute.

to borrow the expression used by the court of appeals in a slightly different context in the companion case of *United States* v. *Wechsler,* No. 11, 331, C.A. 4, decided February 5, 1968, pending on petition for a writ of certiorari, No. 1377, this Term (emphasis by the court)—until the promised payoff was delivered. The bribe here consisted of 1,000 shares of Kent Washington stock, the certificates for which were not delivered to Parrish until August 17, 1962, following several interstate mailings.

While Congress was manifestly concerned only with the use of interstate facilities to engage in activities that satisfied the elements of certain criminal offenses under the law of the particular State, neither the language of Section 1952 nor its purpose warrants confining the federal inquiry to the *minimum* conduct required by state law. The federal act speaks of performing an act to "promote, manage, establish, carry on, or *facilitate* the promotion, management, establishment, or carrying on, of [bribery]." (Emphasis supplied.) The making of the climactic payoff (after using interstate facilities) must certainly be regarded as facilitating the "carrying on" of the bribery, even though the prior conduct was sufficient under state law to permit conviction. Nothing in this construction impairs the Congressional purpose of using state law as the guide for whether interstate facilities are being used to effectuate "unlawful" schemes. Rather, this interpretation clearly implements the textually evident objective of denying the use of interstate facilities to those who would employ them as part of their illegal plan. The "and thereafter"

clause of Section 1952, on which Parrish's argument depends, was intended by Congress, we submit, to provide prospective violators with a *locus poenitentiae*. In this case, petitioners never recanted, and in fact consummated their objective after using the mails.[19]

CONCLUSION

For the foregoing reasons it is respectfully submitted that the petitions for writs of certiorari should be denied.

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[19] Our response to Parrish's claim on this point applies equally to his contention (Parr. Pet. 18–25) that the overt acts charged in the conspiracy count were not in furtherance of the conspiracy. The acts charged were the casting by Parrish of the purchased vote and his acceptance of the stock that constituted the bribe (1 R. 2). Parrish argues that the objective of the conspiracy was fully accomplished when Parrish *consented* to be bribed and that, since this agreement necessarily preceded both the vote and the receipt of the stock, the latter acts could not have been in furtherance of the conspiracy. We reiterate that this conspiracy count charged not a conspiracy in violation of state bribery law, but a conspiracy to violate 18 U.S.C. 1952. For the previously stated reasons, we submit that the *federal* conspiracy continued until both the vote had been cast *and* the bribe paid.

APPENDIX

18 U.S.C. 1952 provides in pertinent part:

> § 1952. *Interstate and foreign travel or transportation in aid of racketing enterprises.*
>
> (a) Whoever travels in interstate or foreign commerce or uses any facility in interstate or foreign commerce, including the mail, with intent to—
>
> (1) distribute the proceeds of any unlawful activity; or
>
> (2) commit any crime of violence to further any unlawful activity; or
>
> (3) otherwise promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity,
>
> and thereafter performs or attempts to perform any of the acts specified in subparagraphs (1), (2), and (3), shall be fined not more than $10,000 or imprisoned for not more than five years, or both.
>
> (b) As used in this section "unlawful activity" means * * * (2) * * * bribery * * * in violation of the laws of the State in which committed * * *.
>
> * * * * *

Sections 18.1–278 and 18.1–279 of the Code of Virginia provide in pertinent part:

> § 18.1–278. *Bribes to officers or candidates for office.*—If any person corruptly give, offer or promise to any executive, legislative or judicial

officer * * * any gift or gratuity, with intent to influence his act, vote, opinion, decision or judgment on any matter, question, cause or proceeding, which is or may be then pending, or may by law come or be brought before him in his official capacity, he shall, upon conviction, be confined in the penitentiary not less than one nor more than ten years. * * *

§ 18.1–279. *Acceptance thereof by officer.*—If any executive, legislative or judicial officer * * * accept * * * any gift or gratuity or any promise to make a gift or do any act beneficial to such officer * * * under an agreement, or with an understanding, that his vote, opinion or judgment shall be given on any particular side of any question, cause or proceeding which is or may be by law brought before him in his official capacity * * *, he shall, upon conviction, be confined in the penitentiary not less than one nor more than ten years * * *. * * *

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